

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 11 0 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARYIn the Matter of )  
)Implementation of Section 309(j) )  
of the Communications Act )  
Competitive Bidding )  
)  
)

PP Docket No. 93-253

COMMENTSOFINDEPENDENT CELLULAR NETWORK, INC.

David L. Hill  
Audrey P. Rasmussen  
Its Attorneys

O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006-3483  
(202) 887-1400

Dated: November 10, 1993

No. of Copies rec'd  
List ABCDE

of 5

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED  
NOV 11 0 1993  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
)

Implementation of Section 309(j) )  
of the Communications Act )  
Competitive Bidding )  
)  
)  
)

PP Docket No. 93-253

**COMMENTS ON**  
**NOTICE OF PROPOSED RULEMAKING**

I.

**INTRODUCTION**

Independent Cellular Network, Inc., submits these its Comments on the Notice of Proposed Rule Making in the above matter, released October 12, 1993. Independent Cellular Network, Inc. ("ICN") holds cellular authorizations in the metropolitan statistical areas of Johnstown and Altoona, Pennsylvania and Parkersburg/Marietta, Wheeling, Steubenville/Weirton, and Huntington/Ashland, West Virginia. In addition, James A. Dwyer, Jr., one of the principals of ICN, is involved in various other cellular activities through related entities in Ohio, West Virginia and Florida.

Mr. Dwyer has been involved in mobile communications matters for over 26 years. He was a participant in the Commission's original cellular rulemaking in 1971. He has been involved in cellular operations since 1983. Mr. Dwyer has also participated in the personal communications services rulemaking.

## II.

### BACKGROUND

The instant Notice of Proposed Rule Making ("Notice") seeks comments on the implementation provisions of the Omnibus Budget Reconciliation Act of 1993 which gives the Commission authority to use competitive bidding to award licenses for use of the radio spectrum. The Commission seeks comments on alternative approaches for bidding payment deposits, safeguards and bidder qualifications and eligibility. While ICN generally supports the thrust of the proposal, its specific comments relate to §309(j)(4)(D) encompassed in the Notice under (c) "Treatment of Designated Entities" which requests comment on procedures to promote economic opportunity for the entity enumerated in the statute.

### III.

#### TREATMENT OF DESIGNATED ENTITIES

ICN submits that the Commission must ensure a level playing field to maximize entry opportunities for small businesses, which will result in a wide range and scope of services to the public. The entrepreneurial spirit was free to innovate, improvise and stimulate the industry we now know as cellular through the open entry and competition made available in the Commission's decision in cellular. It should not be overlooked that this spirit was the impetus that gave the industry its initial boost. The same opportunity holds true for the prospective PCS industry as it unfolds.

ICN agrees with Commissioner Andrew C. Barrett in his separate statement in connection with this referenced docket number. Initially ICN agrees that "10MHz slivers of spectrum" does not put small businesses on equal footing with the large players in the competitive market. Less spectrum means more capital must be put into facilities in order to provide the necessary coverage required by the FCC Rules and Regulations. In order for small businesses to accumulate an equal amount of spectrum, it must acquire additional "slices" of spectrum. ICN agrees with Commissioner Barrett that this is an additional level of

complexity which may require additional unnecessary transaction costs.

Secondly, ICN is concerned with a standard for determining whether an entity is a small business for SBIC financial assistance purposes. The standard permits an applicant to qualify based on a net worth not in excess of \$6 million with average net worth after income taxes for the two preceding years not in excess of \$2 million. This standard is too low for a telecommunications entity and would exclude many of the small MSA operators, a majority of the RSA operators and independent telcos, and just about all of the rural cellular operators. By raising the ceiling these small and medium sized companies can be accommodated. ICN urges the Commission not to overlook the medium sized company which may not fit the criteria for the designated entities, but certainly cannot be considered on an equal basis with the major highly capitalized applicants. In addition to providing deferred payment terms for small business and tax certificates for businesses owned by women and minorities, the Commission also should consider using the same type of deferred payment and interest term for mid-sized companies in order to establish parity with major telecommunications interests and those of particular concern to the Commission such as small businesses, minorities and women.

The Commission should also consider putting the auctions for these preference blocks last in the process. It

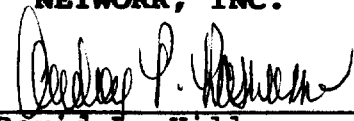
is impossible to determine the values that will be produced in the whole auction process and how high a bid will have to be to secure a frequency band. The categories of preferences represent the people least able to instantly produce sums that may be required, and a combination of time and preferential treatment in the bid process, as well as payment terms, will be necessary for this preference to be a reality. Otherwise, just by the process alone, the preferred categories of applicants will be precluded by the high money game and be relegated to the familiar "minority type" majority positions commonly found in past broadcast practices.

The Commission is requested to take these comments into consideration in fashioning its regulatory scheme to implement §309(j) of the Communications Act.

Respectfully submitted

**INDEPENDENT CELLULAR  
NETWORK, INC.**

By:

  
\_\_\_\_\_  
David L. Hill  
Audrey P. Rasmussen  
Its Attorneys

O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

Dated: November 10, 1993

1144r